

1 SPIRO MOORE LLP
Ira Spiro, Cal. Bar #67641,
2 Ira@spiromooore.com
Jennifer L. Connor, Cal. Bar #241480
3 Jennifer@spiromooore.com
Denise L. Diaz, Cal. Bar #159516
4 Deniseldiaz@Gmail.Com.
Justin F. Marquez, Cal. Bar #262417
5 Justin@Spiromooore.Com
11377 W. Olympic Blvd., Fifth Floor
6 Los Angeles, CA 90064
Tel (310) 235-2468, Fax (310) 235-2456

7 ***Attorneys For Plaintiff Elsy Garcia De Mira***

8 LITTLER MENDELSON, P.C.
9 Arthur M. Eidelhoch, Cal. Bar #168096
aeidelhoch@littler.com
10 GALEN M. LICHTENSTEIN, Bar No. 251274
glichtenstein@littler.com
11 SHANNON M. GIBSON, Bar No. 256634
sgibson@littler.com
12 650 California Street, 20th Floor
13 San Francisco, California 94108
Tel. (415) 433-1940, Fax (415) 399-8490
14

15 ***Attorneys for Defendants***

16 [Additional counsel listed *infra*]
17

18 **UNITED STATES DISTRICT COURT OF CALIFORNIA**
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE BRANCH

20 ELSY GARCIA DE MIRA, individually, and
on behalf of all others similarly situated,

21 Plaintiff,

22 vs.
23

24 HCR MANORCARE; HCR MANORCARE
MEDICAL SERVICES OF FLORIDA, LLC;
25 MANOR CARE, INC.; and DOES 1 through
10 inclusive

26 Defendants.
27

CASE NO. CV 1204092 LHK

**STIPULATION RE: LEAVE TO FILE
FIRST AMENDED COMPLAINT TO
ADD A "DOE 1" DEFENDANT AND
DISMISS WITHOUT PREJUDICE HCR
MANORCARE; HCR MANORCARE
MEDICAL SERVICES OF FLORIDA,
LLC; AND MANOR CARE, INC.;
[PROPOSED] ORDER THEREON**

28 STIPULATION RE LEAVE TO FILE FIRST AMENDED COMPLAINT; [PROPOSED] ORDER
CASE NO. 12-cv-04092 LHK

1 LAW OFFICE OF SAHAG MAJARIAN II
2 Sahag Majarian II - Cal. Bar #146621
3 Sahagii@aol.com
4 18250 Ventura Boulevard
5 Tarzana, CA 91356
6 Tel.: (818) 609-0807; Fax: (818) 609-0892

Attorneys For Plaintiff Elsy Garcia De Mira

28 STIPULATION RE LEAVE TO FILE FIRST AMENDED COMPLAINT; [~~PROPOSED~~] ORDER
CASE NO. 12-cv-04092 LHK

1 Plaintiff ELSY GARCIA DE MIRA ("Plaintiff") and Defendants HCR MANORCARE, INC.
 2 [erroneously sued as HCR MANORCARE]; HCR MANORCARE MEDICAL SERVICES OF
 3 FLORIDA, LLC; and MANORCARE, INC. ("Defendants"), by and through their respective counsel,
 4 hereby enter into the following Stipulation Re: Leave To File First Amended Complaint To Add A
 5 DOE "1" Defendant And Dismiss Without Prejudice HCR MANORCARE MEDICAL SERVICES
 6 OF FLORIDA, LLC; and MANORCARE, INC. ("Stipulation"). Specifically, by and through this
 7 Stipulation, the parties request that the Court grant Plaintiff leave to file a First Amended Complaint
 8 ("FAC"), in the form attached hereto as Exhibit "1", which seeks to add a newly named defendant,
 9 HEARTLAND EMPLOYMENT SERVICES, LLC ("Heartland"), in place of defendant DOE "1" and
 10 dismiss without prejudice HCR MANORCARE INC., HCR MANORCARE MEDICAL SERVICES
 11 OF FLORIDA, LLC; and MANORCARE, INC. The parties mutually request that the Court approve
 12 this Stipulation and enter an order in accordance thereon.

13 STIPULATION

14 1. The original Complaint in this action was filed on August 3, 2012 against HCR
 15 ManorCare, Inc. [erroneously sued as HCR ManorCare]; HCR ManorCare Medical Services Of
 16 Florida, LLC; and ManorCare, Inc.

17 2. Plaintiff asserts putative class action claims for violation of various wage and hour laws
 18 premised on contentions that the employer of Plaintiff and other hourly employees working in
 19 California allegedly did not: provide lawful meal and rest breaks; pay for all hours and/or overtime
 20 hours worked as a result of rounding employee time; provide accurate itemized wage statements; pay
 21 timely wages owed upon termination of the employment relationship; and other such derivative claims
 22 for restitution, penalties, and/or equitable relief.

23 3. HCR ManorCare, Inc., HCR ManorCare Medical Services Of Florida, LLC, and
 24 ManorCare, Inc. maintain that they are improperly named defendants in this employment action
 25 because they never employed Plaintiff Elsy De Mira. Defendants contend that the proper legal entity
 26 that employed Plaintiff De Mira is Heartland Employment Services, LLC.

27 4. Based on information learned subsequent to filing suit, including the Joint Case
 28 STIPULATION RE LEAVE TO FILE FIRST AMENDED COMPLAINT; ~~[PROPOSED]~~ ORDER
 CASE NO. 12-cv-04092 LHK

1 Management Statement, Initial Disclosures, meet and confer exchanges, and statements under oath
2 submitted by way of declaration, Plaintiff hereby moves the Court for leave to file a First Amended
3 Complaint (“FAC”) that adds a newly-named defendant, **Heartland Employment Services, LLC, in**
4 **place of defendant DOE 1.** Defendants, while denying all of Plaintiff’s allegations, have no
5 objection to the filing of the proposed First Amended Complaint that would assert the same pending
6 causes of action and allegations against Heartland Employment Services, LLC and in lieu of the
7 identified Defendants discussed below.

8 5. Defendants have requested that Plaintiff dismiss her claims against HCR ManorCare,
9 Inc., HCR ManorCare Medical Services Of Florida, LLC, and ManorCare, Inc. on the grounds that
10 they did not act as an employer with respect to Plaintiff or putative class members in California during
11 the statutory period. Based on information learned subsequent to filing suit, including the Joint Case
12 Management Statement, Initial Disclosures, meet and confer exchanges, and statements submitted
13 under oath by way of declaration, Plaintiff has agreed to dismiss her claims against HCR ManorCare,
14 Inc., HCR ManorCare Medical Services Of Florida, LLC, and ManorCare, Inc. **without prejudice.**

15 6. The parties recognize that Plaintiff propounded Plaintiff’s First Set Of Interrogatories
16 To HCR ManorCare [Re: HCR ManorCare entities] (“Plaintiff’s First Set Of Rogs”) and Plaintiff’s
17 First Set Of Requests For Production of Documents To HCR ManorCare [Re: HCR ManorCare
18 entities] (“Plaintiff’s First Set Of RPDs”) served on February 6, 2013. In light of the proposed FAC
19 and dismissal of the identified Defendants, the parties agree to continue the deadline for responses to
20 Plaintiff’s First Set Of Rogs and Plaintiff’s First Set Of RPDs indefinitely and date undetermined.
21 Plaintiff currently believes these discovery requests are unnecessary.

22 7. Notwithstanding the above indefinite continuance, if at some point, Plaintiff believes
23 responses to Plaintiff’s First Set Of Rogs and/or Plaintiff’s First Set Of RPDs are necessary and
24 appropriate, Plaintiff will provide written notice and the corresponding responses (and objections) will
25 be due thirty (30) day after that notice is provided, or as otherwise agreed. Further, while reserving all
26 other rights and objections, in the event Plaintiff provides the above-described notice, Defendant
27 Heartland Employment Services, LLC agrees that it will not refuse to respond to these discovery
28

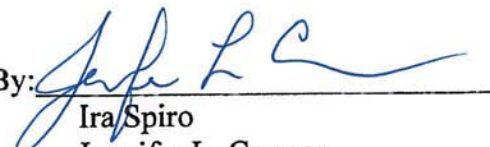
1 requests on the grounds that the propounded entities are no longer party to the suit.

2 8. The parties further agree that the other written discovery requests served by Plaintiff on
 3 February 6, 2013, to wit: Plaintiff's Second Set Of Interrogatories To HCR ManorCare [Re: Policies
 4 And Practices]; Plaintiff's Second Set Of Requests For Production Of Documents To HCR ManorCare
 5 [Re: Policies And Practices]; Plaintiff's Third Set Of Interrogatories To HCR ManorCare [Re: Class
 6 Contact Info]; and Plaintiff's Third Set Of Requests For Production Of Documents To HCR
 7 ManorCare [Re: Class Contact Info] are effective as if propounded to proposed Doe "1" defendant,
 8 Heartland Employment Services, LLC, and will be due in accordance with the agreement of the parties
 9 and undersigned counsel. The parties further agree that the discovery requests served by Heartland
 10 Employment Services, LLC, on March 1, 2013 are effective as if Heartland Employment Services
 11 LLC was then a Defendant in this action with all associated rights to propound written discovery, and
 12 Plaintiff will not object or refuse to respond to that discovery on the basis that the discovery requests
 13 were propounded by a non-party or that Heartland Employment Services, LLC, was not the employer
 14 of Plaintiff and the putative class members.

15 9. The parties mutually request that the Court grant Plaintiff leave to file a First Amended
 16 Complaint in the form proposed herein within 5 days after entry of this order. The parties further
 17 mutually agree that Defendant Heartland Employment Services, LLC shall have 14 days after the
 18 filing of Plaintiff's First Amended Complaint to file a responsive pleading.


19 Date: 3/7, 2013

SPIRO MOORE LLP

21 By: 
 22 Ira Spiro
 23 Jennifer L. Connor
 Attorneys for Plaintiff and putative class

24 Date: 3/7, 2013

LITTLER MENDELSON, P.C.

26 By: 
 27 Arthur M. Eidelhoch
 28 Attorneys for Defendants

~~PROPOSED~~ ORDER


Good cause appearing therefore, the foregoing Stipulation Re Leave To File First Amended Complaint ("Stipulation") is hereby approved and it is hereby ordered that:

1. Plaintiff is granted leave to file a First Amended Complaint in the form attached as Exhibit "1" to the parties' Stipulation. The First Amended Complaint shall be filed and served on Defendants' counsel of record within 5 days after entry of this order.

2. Upon the filing of the First Amended Complaint, Plaintiff's claims against defendants HCR ManorCare, Inc. [erroneously sued as HCR ManorCare], HCR ManorCare Medical Services of Florida, LLC, and Manor Care, Inc. shall be dismissed without prejudice, with each party to bear its own costs and newly-named defendant, Heartland Employment Services, LLC, will be added and substituted as "Doe 1" defendant.

3. Upon the filing of the First Amended Complaint, defendant Heartland Employment Services, LLC shall have 14 days thereafter to file a responsive pleading.

Date: 3/19, 2013


Honorable Judge Lucy H. Koh
United States District Court